



Interview Summary: Angelina Mason, Canadian Bankers Association

Background

Angelina Mason is currently the General Counsel and Vice President, Legal & Risk at the Canadian Bankers Association (“CBA”). She has practiced law in the banking sector for over 30 years, including for foreign and domestic banks, credit card and payment networks. From December 24, 2021 to February 25, 2022, Ms. Mason was the Interim Chief Executive Officer at the CBA.

Ms. Mason was interviewed by Daniel Sheppard and Étienne Lacombe on August 19, 2022. Questions about this summary should be directed to Daniel Sheppard.

Text contained in [square brackets] are explanatory notes provided by Commission Counsel to assist the reader.

Government Consultation with the Canadian Bankers Association

The CBA did not have prior knowledge that the Federal Government was going to declare a public order emergency under the *Emergencies Act*.

On February 14, 2022, the Deputy Prime Minister and Minister of Finance made public remarks respecting the government’s invocation of the *Act*. During those remarks the Deputy Prime Minister made comments about steps that the government was taking pursuant to its powers under the *Act*. These included measures that related to the banking sector. The CBA was aware of these comments when they were made.

Prior to the publication of the *Emergency Economic Measures Order* (“*EEMO*”) the CBA examined the public statements made by government officials about measures that would impact the banking sector and began to develop a list of issues and questions for the Department of Finance.¹ Once the text of the *EEMO* was released, the CBA gained more information about the requirements that were being imposed on the banking sector. It updated its list of issues and concerns.²

During this period of time, the CBA reached out to Department of Finance officials. The main officials that the CBA dealt with were Julien Brazeau, Isabelle Jacques, Richard Bilodeau, and Manuel Dussault.

¹ *Emergencies Act – Order Relating to Financial Services: List of Questions and Issues*, **CBA00000002**.

² *Emergencies Act – Order Relating to Financial Services*, **CBA00000001**.



The CBA was in direct communication with the Department of Finance. In addition, legal counsel from several of the Domestic Systemically Important Banks (“DSIBs”) communicated with departmental officials on behalf of the CBA.

The CBA received answers – to the extent that they were available – to its list of issues and questions through DSIB counsel. The CBA held a further meeting with departmental officials on February 17, 2022 so that it and its members could receive this information directly from the Department of Finance.

During the meeting on February 17th, a number of issues were discussed consistent with those raised in the CBA’s updated list of issues and concerns.

In reference to the CBA’s lists of concerns, the CBA indicated that it preferred an approach to freezing accounts based on official government lists of “designated persons”. Departmental officials were informed that banks were concerned with the prospect of having to determine for themselves whether a client was a “designated person”. The CBA noted that by providing official lists, the government would be promoting consistency. Departmental officials were also informed that a list-based approach would conform with existing regulatory infrastructure within banks. Banks did not have existing processes that were designed for the type of regime contemplated under the *EEMO*. As discussed below, the RCMP did provide financial institutions with lists, though initially clarity was needed on whether the persons on the list were to be considered designated persons.

The CBA asked whether banks could make humanitarian or other exceptions to the requirement to freeze accounts. Departmental officials informed the CBA that the obligation was mandatory, and that no exceptions existed. The CBA continued to raise this issue with the Department of Finance. Departmental officials indicated that they would consider the issue further. The government appeared willing to consider the possibility of humanitarian exemptions. Ultimately the issue became moot because the *EEMO* was revoked.

The CBA raised concerns about the process by which clients who had their accounts frozen could dispute whether they were “designated persons” under the *EEMO*. In particular, the CBA had concerns about the safety to bank staff. The CBA was concerned that if individuals who had their accounts frozen were told to attend at bank branches to dispute the freezing, there was a real risk of security incidents occurring. The CBA asked the government to consider an alternative system of disputing decisions to freeze accounts. The CBA advocated for an approach where individuals would be directed to speak to law enforcement, rather than to their banks. Departmental officials would not commit to an approach where the government would deal with unfreezing requests. The CBA was ultimately unaware of any security incidents related to clients seeking unfreezing decisions from banks.

The CBA also prepared a draft “frequently asked questions” (“FAQ”) document that the government could post to its website to help members of the public better understand



the *EEMO*.³ This FAQ document included a direction to individuals whose accounts were frozen to contact the government or law enforcement about unfreezing. This reflected the CBA's view that unfreezing decisions should be in the hands of the government, and not individual banks. The idea that individuals who were no longer involved in activities prohibited under the *Emergency Measures Regulations* should provide an attestation to their local police detachment originated from the CBA.

The CBA shared this document with Departmental officials on February 17th. On February 18th, Richard Bilodeau indicated that the CBA's proposed approach to unfreezing was "unlikely to work for now".⁴ This reflected the Department's continued position of not committing to a government-lead approach to unfreezing.

Law Enforcement Consultation with the Canadian Bankers Association

The CBA also was engaged in regular communications with the Royal Canadian Mounted Police. The CBA's main point of contact was Kelly Hughes. It also engaged with Dennis Beaudoin.

As with its outreach to the Department of Finance, the CBA began to engage with the RCMP before the text of the *EEMO* was publicly released. The CBA understood that there would be a reporting requirement imposed on banks and wanted to establish lines of communication early on. The CBA was also looking to obtain as much information about bank's obligations as possible. It appeared that the RCMP was in the same general position as the CBA in terms of seeking clarity about the requirements of the *EEMO*.

One issue that was initially unclear to the CBA was the interaction between the requirement to freeze the assets of "designated persons" and the requirement to report assets of "designated persons" to the RCMP and CSIS. From its initial consultations with the RCMP, the CBA understood that banks might be required to report the existence of assets to law enforcement before freezing them. However, when the text of the *EEMO* was released, it appeared that banks would be required to freeze assets immediately. Further consultations with the RCMP clarified that the *EEMO* did not set out a two-step approach of notify first, then freeze.

³ *Draft List of FAQs to be Posted on the GOC Website – Emergencies Act, Final 220217, CBA00000007.*

⁴ Email from Richard Bilodeau to Angelina Mason, February 18, 2022, 4:41pm, **CBA00000005**. The reference to "questions 5 and 6" is likely a typo and should read "questions 4 and 5".



Implementing the *Emergency Economic Measures Order*

The two most analogous obligations banks have experience with are their obligations to comply with economic and terrorism-finance sanctions, and their anti-money laundering obligation to identify suspicious or unusual transactions. Banks have infrastructure in place to deal with their sanctions and anti-money laundering obligations, but neither was fully adapted to manage the obligations imposed by the *EEMO*. When the *EEMO* was put in place, there was a need for banks to adapt to the obligations that were imposed on them.

A significant adjustment that had to be made related to the concept of “designated persons” under the *EEMO*. The banking sector had broad experience dealing with list-based sanctions regimes. These regimes involved official lists of sanctioned entities being shared with financial institutions, who then had a duty to take certain prescribed measures with respect to them. Under the *EEMO*, there was no reference to a formal list of designated persons and banks were under a duty to determine who constituted a designated person under the order.

The RCMP did begin to provide banks with lists of entities that the RCMP had reason to believe were designated persons for the purposes of the *EEMO*. These lists included names of individuals, as well as dates of birth, addresses, photographs, and information on the activities that they had engaged in that explained why they were contained on the list. The definition of “designated person” did not reference a list and as a result banks were required to determine what, if anything, their obligations were beyond reviewing the RCMP list and determining if any of the people listed were clients.

In the course of discussions between the CBA and the RCMP, the RCMP clarified that the entities contained on the lists were “designated persons” under the *EEMO*. Once this message had been received, a bank’s ‘duty to determine’ was comprised mainly of ensuring that the entity named in an RCMP list was in fact the same as a bank’s client prior to taking any steps to freeze its account.

Banks did also continue to apply a risk-based approach to identifying “designated persons”. Banks are already required to monitor for suspicious activity. These processes were adapted for use in the context of the protests that were taking place in Ottawa. For example, if an individual made a purchase of 20 port-a-potties in the Ottawa area, this could have been flagged by a bank through their normal review procedures and could have resulted in a bank deciding to freeze that customer’s account. However, most freezing activity was based on the RCMP lists.

While the *EEMO* was in force, there were discussions involving the CBA about whether banks would be receiving lists of designated persons from agencies other than the RCMP. Ultimately the only lists that the CBA received were from the RCMP.



Accounts Frozen under the *Emergency Economic Measures Order*

Banks froze a range of accounts under the *EEMO*, including personal chequing and savings accounts, RRSPs, lines of credit, and corporate accounts.

Corporate accounts of designated persons were frozen because the *EEMO* applied to property indirectly held by designated persons. Where a designated person controlled an entity, there was an obligation to freeze the entity's accounts.

There was no particular "type" of corporate account that was frozen under the *EEMO*. A range of corporate accounts were frozen by banks.

A number of banks also froze US Dollar accounts. This was not indicative of freezing bank accounts by foreign persons. These accounts would generally have been Canadians who choose to hold funds in US dollars at a bank in Canada.

In one case, an individual's bank account was partially frozen.⁵ To clarify the meaning of this document, the individual in question had received a transfer of funds from a "designated person", but the bank had no reason to believe that the recipient was themselves a "designated person". As such, the bank decided to freeze only the transferred funds, and not the other funds that were held in the account.

Unfreezing Accounts

Similar to how accounts were frozen, the majority of unfreezing of accounts was based on information provided to banks by the RCMP. Just as the RCMP would regularly update their lists of persons they had grounds to believe were "designated persons", the RCMP would also provide the CBA with updates when the RCMP believed individuals were no-longer "designated persons". When banks received this information from the RCMP, they acted swiftly to unfreeze individuals' accounts.

There was, however, an example of a situation where a bank unfroze accounts without prompting by the RCMP. This occurred when a customer who had their account frozen provided proof to their bank that they had left Ottawa and was therefore no longer engaged in activity prohibited by the *Emergency Measures Regulations*.⁶

⁵ *Financial Date Report – Emergency Act*, February 21, 2022, **CBA00000036**.

⁶ An example of this is listed in *Financial Date Report – Emergency Act*, February 21, 2022, **CBA00000036**.



Public Misunderstandings about the *Emergency Economic Measures Order*

There were significant misunderstandings amongst the public about the *EEMO*, particularly the scope of asset freezing. Examples of common misunderstandings included the belief that the *EEMO* only applied to banks, and that individuals would have their accounts frozen based on donations made to earlier fundraising campaigns.

There was a fair bit of noise about banks relying on leaked donor lists. The only list that the banks used was that provided by the RCMP.

The CBA was concerned by the extent of misunderstandings about the *EEMO*. It wanted to ensure that an accurate, consistent message about the *EEMO* would reach the public. The CBA supported its member banks in their public communications. It also worked with the government of Canada by identifying common misunderstandings and asking the government to include clarifying language in their official statements.

Cost and Impact of the *Emergency Economic Measures Order* on Banks

There were no clear economic costs associated with implementing the *EEMO* that the CBA is aware of. Banks used their existing infrastructure as best as they could to comply with the *EEMO*'s requirements.

The CBA believes there were no long-term impacts on relationships between banks and their clients. Misunderstandings were addressed, the *EEMO* was short lived, and only impacted a small number of people. The CBA was not aware of clients changing their patterns of financial transactions in response to the *EEMO*. The impact of the order was relatively limited.